

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Filing by U S WEST)	<u>DOCKET NO. 96-049-T05</u>
COMMUNICATIONS, INC., of a Revised)	
Tariff to Discontinue Offering Centrex)	<u>SECOND REPORT AND ORDER</u>
Plus Service to New Customers.)	

ISSUED: April 29, 1997

SYNOPSIS

By this Order the Commission reaffirms that U S West Communications, Inc. ("USWC" or "the Company") offer Centrex Plus Service for resale. The Commission clarifies and upholds Findings and Conclusions drawn in its September 25, 1996, Report and Order in this docket, but reverses one provision of that order. The Commission fully rescinds for all Centrex providers the applicability of the seven terms and conditions that have governed the offering of Centrex Plus since January, 1988. It prohibits the sale of Centrex Plus at this time to residence locations and to aggregated but unrelated business customer locations.

Appearances:

Gregory B. Monson	For	USWC
Laurie Noda	"	The Division of Public Utilities
Assistant Attorney General		
Thomas F. Dixon	"	MCI
Mark P. Trincherro	"	AT&T
William J. Evans	"	McLeod Telemanagement, Inc.

By the Commission:

PROCEDURAL HISTORY

On February 5, 1996, USWC filed Advice Letter 96-05 with the Commission stating its intention to discontinue offering Centrex Plus Service to new customers following the date of the letter. The Company informed the Commission that it intended to grandfather the service by

DOCKET NO. 96-049-T05

-2-

continuing to offer it to existing customers until April 29, 2005.

In a filing dated February 19, 1996, AT&T petitioned the Commission to either reject USWC's proposed tariff, or suspend it pending further investigation. AT&T took the position that USWC's proposed withdrawal of the service was anti-competitive insofar as it was filed two days prior to the effective date of the Telecommunications Act of 1996 ("the Act"). MCI Telecommunications Corporation ("MCI") and Citizens Telecommunications Company of Utah were also granted leave to intervene.

On March 5, 1996, the Commission suspended USWC's proposed tariff revision as recommended by the Division of Public Utilities ("Division"). The matter came before the Commission for hearing on May 2, 1996. On May 15, 1996, the Commission admitted two additional exhibits, DPU 3 and DPU 4 sponsored by Division witness Larry Fuller, with the consent of all of the parties.

On September 25, 1996, the Commission issued a Report and Order setting forth Findings and Conclusions and Ordering that:

1. USWC offer Centrex Plus Service for resale so long as it offers the service to any retail customer as required by Section 251 (C)(4)(A) of the Telecommunications Act of 1996. The sale by USWC of Centrex service, whether at retail or wholesale, remains subject to the seven conditions enumerated in the January 25, 1988, Order issued in Docket No. 86-049-17, and;
2. USWC petition the Commission to discontinue Centrex Plus Service when it desires

DOCKET NO. 96-049-T05

-3-

to entirely withdraw the service.

On October 25, 1996, the Company and the Division filed Petitions for Reconsideration, Rehearing and Clarification of the September 25th Order. By Order dated November 4, 1996, the Commission granted the Petitions and issued a list of seven questions on which it sought further evidence on rehearing. An additional hearing was held on December 19, 1996.

On December 3, 1996, McLeod Telemanagement, Inc., an authorized provider of interexchange service in Utah and reseller of Centrex service in other states, petitioned to intervene, which petition was granted by order dated December 19, 1996.

DISCUSSION

We note at the outset that none of the evidence presented on rehearing causes us to reverse a Finding contained in our initial Order. We stated therein that although Centrex Plus is price listed, the Commission otherwise retains continuous jurisdiction over, among other aspects, the availability of the service¹. We concluded there and reaffirm here that both the public interest and 47 USC 251 (c) (4) (A) require that Centrex Plus be offered for resale when the service is retailed to non-carrier customers.

Both the Company and the Division seek clarification regarding whether or not Centrex Plus resellers, who purchase the service on a wholesale basis from USWC, are subject to

¹ See UCA 54-8b-7.

DOCKET NO. 96-049-T05

-4-

the seven conditions² established by Commission Order in Docket No. 86-049-17. The Division testified that the seven terms and conditions surrounding offering of Centrex Plus, which have been effective since 1988, need not be overruled at this time. They acknowledge however, as do USWC and AT&T, that the conditions originated and were applicable in an environment that no longer exists. They were established when the Company was the sole provider of Centrex service³ (as it remains today). The seven conditions predate state policy declarations enumerated in UCA 54-8b-1.1 and national policy goals contained in 47 U.S.C. § 251 (b) (1) of the Act. Upon reconsideration, we find continued applicability of all of the seven conditions to be a breach of

²The seven conditions are: (1) Embedded Centron systems may be priced on an avoided cost basis where there is no expected higher value use for the Centron lines during the life of the contract. (2) Sales commissions and revenue credits will be given only for those sales which increase the recurring monthly billing. Commissions and revenue credits will not be given for sales that would displace PBX trunks with main station lines and NARs which do not include station lines beyond the PBX. (3) Prices for new Centron systems will be based on the same annual cost factors used for all other access services, except where specific investment and cost information is available for an individual installation. An exception will be made on the depreciation factor where new plant is required. That portion of new plant that would have little potential for reuse if the Centron is not continued will use a depreciation factor that will fully depreciate the plant over the life of the contract. (4) Prices for custom Centron will be set to insure that Centron intrastate revenue, less the Centron avoidable cost will be greater than the intrastate revenue, less the avoidable cost of the alternative to Centron. (5) There will be no sell down of revenue in the grouping of individual subscriber locations. (6) Custom Centron will only be provided where the customer's total system requirements exceed the capabilities of Centron 30. Centron 6 and 30 would be provided for smaller system service needs. (7) Any deviations from these conditions will require case by case notification to the Commission and the Division.

³ We distinguish here in a competitive context between Centrex as a central office-based turnkey *service* offering and substitutable *facilities* such as private branch exchange and key systems which, at the time of the January 1988 order as now, are considered the primary alternative to Centrex. The Centrex tariffing exemption granted in our order in Docket 86-049-17 was premised upon findings that Centrex Plus was subject to effective competition and that customers had reasonably available alternatives. The order concluded that Centrex services and premises-based terminal equipment are functionally equivalent and substitutable alternatives for each other. Although terminal equipment and Centrex both provide feature sets that are competitive, Centrex Plus service is presently available as a wholesale or retail service only from USWC. Thus, a competitive *service-based* market for Centrex product that bundles the loop, a common block in the switch, network access registers and a set of software-defined features does not exist today. A telecommunications corporation wishing to resell Centrex must at present rely on the Company as the primary source of supply.

DOCKET NO. 96-049-T05

-5-

47 U.S.C. § 251(c)(4)(B)⁴. Though USWC proposes that conditions three and five be retained, we find the seven conditions inimical to development of a competitive resale market for Centrex and conclude that their applicability to resellers and USWC should be and is hereby rescinded.

Though mindful of the statutory mandate in 47 U.S.C. § 251(c)(4)(B) that incumbent local exchange carriers not prohibit or impose unreasonable or discriminatory conditions or limitations on the resale of telecommunications service, we find cause to exercise the statutory discretion granted this Commission by the same section to prohibit resale across different subscriber categories of a service purchased at wholesale rates. USWC testified in favor of a cross-class restriction on the resale of Centrex to residential customers asserting that it should only be sold to the same category of customers. We agree. The Company has not historically marketed Centrex Plus as a residence service offering, or as a product available to unrelated business accounts by aggregating unrelated customer loops in a single common block.

We conclude that the aggregation of subscriber locations, whether residence or business, should be temporarily restricted at this time. In the interest of competitive equity⁵ we will

⁴ 47 U.S.C. § 251(c)(4)(B) states that incumbent local exchange carriers have the duty "not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with regulation prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers."

⁵ We view the restriction on aggregation of unrelated residence and business customer locations by resellers as a temporary precautionary measure to mitigate opportunity for resale arbitrage. To the degree a reseller could purchase at wholesale a bundled, feature-laden Centrex product and underprice the Company's wholesale and retail price for similarly equipped single business lines, USWC suffers a competitive disadvantage. We do not wish to artificially induce a resale arbitrage opportunity. Our general view on product substitutability was expressed recently in our Order in Docket No. 96-049-T20 where we concluded "that neither Company policy nor pricing strategies should serve to exert undue control over natural migration rates to other services as the public switched network [and

not allow Centrex resellers or USWC to aggregate residence locations or unrelated businesses in a Centrex common block. We conclude that the only allowable aggregation of business locations by resellers or USWC for the retail sale of Centrex is to single account entities who, although they may have multiple locations, are billed for Centrex service elements under a primary billed telephone number⁶ account.

USWC seeks clarification of the initial order as it relates to whether the Company is required to offer Centrex to new retail customers other than resellers. We conclude that the Company has discretion to offer or deny Centrex Plus to new retail customers so long as it complies with wholesale market requirements embodied in USC 251 (c) (4) and state and federal non-discrimination statutes.

USWC also seeks clarification of the initial order as it relates to terms and conditions for grandfathering of Centrex Plus. The Company argues that it is clearly consistent with the intent of 47 U.S.C. § 251(c)(4) that a resellers market be restricted to USWC's own grandfathered customer base. Counsel for USWC argues that grandfathering is an appropriate discrimination and that the Act does not require USWC to wholesale Centrex to resellers for unrestricted resale. We disagree.

Grandfathering existing USWC customers for eight more years while limiting

competition] evolves" [parenthetical added]. However, that conclusion was drawn in a context where substitutability was caused by technological superiority rather than a market opportunity for pricing arbitrage.

⁶ We use the term billed telephone number here as it is commonly used in the exchange carrier industry to refer to the primary telephone number mapped to Automatic Message Accounting software in a central office to record billable usage data for multiple calling party numbers and/or locations associated with a single customer account.

availability of the service only to existing USWC customers would subvert the nascent resale market. We find denying the availability of Centrex Plus to potential end users while thousands of grandfathered loops continue to receive service to be an anti-competitive discrimination against both resellers and potential subscribers⁷. We concur with MCI's interpretation that the relevant FCC order⁸ was "permissive and not restrictive" in concluding that any purchase rights extended to an incumbents retail customers by virtue of grandfathering should also extend to a resellers end users, both actual and potential. We find that USWC's actual existing and future retail customer base, in addition to any potential end user purchasers of Centrex Plus in the resale market, should be free to exercise choice of provider.

We reaffirm the conclusion reached in our September 25th order that the perceived threat to the Company from resale arbitrage is not "reason enough under federal law for the Commission to approve withdrawal or grandfathering of a service when it is being offered as a retail service". We are granting herein a de facto grandfathering to the degree that we impose no obligation on USWC or other providers to directly serve new end users in the retail market. Our objective is simply to establish conditions that will allow development of a competitive market for Centrex resale. To that end, we will hold USWC to testimony by its witness that the Company will

⁷ Such action would foreclose development of a resale market for Centrex Plus at a time when USWC is seeking to suspend retail availability of the service. We view such action as contrary to UCA 54-8b-3.3 (2) (a) inasmuch as resellers and potential end users wishing to purchase the service would be unduly prejudiced. We further believe it would violate USC 47 § 253 (a).

⁸See First Report and Order in Common Carrier Docket No. 96-98 In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, para. 968.

DOCKET NO. 96-049-T05

-8-

waive termination liability provisions in tariffs or contracts if a subscriber totally disconnects Centrex Plus service in favor of another USWC service, or a service provided by another entity.

Centrex Plus was detariffed in 1988 under the exemption [from regulatory requirements] authority granted by UCA 54-8b-3. We find no cause to now withdraw the tariffing exemption, though we impose an accompanying requirement pursuant to UCA 54-8b-3 (2). The Company will continue to have pricing flexibility for detariffed elements of Centrex Plus service so that it may be price-competitive in retail markets with resellers of the service, and to mitigate any attempt at resale arbitrage. However, insofar as USWC increases the retail price of Centrex Plus, with consequences for the wholesale avoided cost discount billable to resellers, it may not charge a different price, excluding the effect of adjustment for avoided costs, for the same service. We are persuaded by McLeod's testimony that it would be discriminatory for the Company to charge a different price for the service only for new [wholesale or retail] customers, if the service configuration purchased by two parties is similar. We conclude that to the degree the Company chooses to exercise pricing flexibility, it must have a uniform price for the same service so that resellers suffer no disadvantage in competing for existing⁹ or potential subscribers.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The seven conditions contained in our Report and Order dated January 25, 1988 ,

⁹ USWC testified of a provision in the majority of its Centrex contracts which allows contractual amendments made to comply with law or rules established by a governmental agency.

DOCKET NO. 96-049-T05

-9-

in Docket 86-049-17 are hereby rescinded.

2. No telecommunications corporation may at this time engage in the retail sale of Centrex Plus to an aggregation of unrelated business or residence locations.
3. USWC may not discriminatorily price Centrex Plus for sale to new wholesale or retail customers purchasing a similarly configured Centrex service arrangement.

Any person aggrieved by this Order may petition the Commission for review within 20 days of the date of this Order. Failure to do so will forfeit the right to appeal to the Utah Supreme Court.

DATED at Salt Lake City, Utah, this 29th day of April, 1997.

/s/ Stephen F. Mecham, Chairman

(SEAL)

/s/ Constance B. White, Commissioner

/s/ Clark D. Jones, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

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- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Filing by)	<u>DOCKET NO. 96-049-T05</u>
U S WEST COMMUNICATIONS, INC.,)	
a Revised Tariff to Discontinue)	<u>REPORT AND ORDER</u>
Centrex Plus Service to New)	
Customers.)	

ISSUED: September 25, 1996

SYNOPSIS

By this order the Commission requires U S West Communications, Inc. ("USWC" or "the Company") to offer Centrex Plus Service for resale.

Appearances:

Gregory B. Monson	For	USWC
Laurie Noda	"	The Division of Public
Assistant Attorney		Utilities
General		
Thomas F. Dixon	"	MCI
William J. Evans		
Mark P. Trincherro	"	AT&T

By the Commission:

PROCEDURAL HISTORY

On February 5, 1996, USWC filed Advice Letter 96-05 at the Commission stating its intention to discontinue offering Centrex Plus Service to new customers following the date of the letter. The Company informed the Commission that it intended to grandfather the service by continuing to offer it to current customers until April 29, 2005. USWC's rationale for the proposal was that Centrex Service is becoming obsolete and is not meeting the needs of its customers. The Company also expressed concern

DOCKET NO. 96-049-T05

- 4 -

today.

6. Centrex Plus Service has recovered its costs according to the Division Cost of Service Study (DCOS). It has not produced the average system rate of return.²
7. USWC can re-price Centrex Plus Service to correct the potential for arbitrage.

CONCLUSIONS OF LAW

The Commission has party and subject matter jurisdiction.

USWC and the Division argued that the Commission lost jurisdiction over Centrex Plus Service when that service was detariffed in 1988. The Division took the position that the Commission would have to invalidate its 1988 order to re-assert jurisdiction. In its post-hearing brief, the Division argued that the Commission would have to find that Centrex Plus is no longer subject to effective competition before we could compel USWC to offer the service. We disagree. The 1988 order is clear. The Commission never surrendered jurisdiction over Centrex Service. The Commission stated:

Mountain Bell does not seek total exemption from all regulation for these services. The services will remain subject to regulation as to numerous non-price factors, such as quality, safety, and facilities. Furthermore, the capital investment, expense and revenues of any services detariffed pursuant to this Order will continue to be included in revenue requirement calculations for

²See Proprietary Exhibit DPU 3, Descriptions 25, 30, and 31.

DOCKET NO. 96-049-T05

-5-

ratemaking purposes.³

Though Centrex Service was detariffed or price listed, the Commission retained jurisdiction over the service otherwise. Certainly the very availability of the service is an aspect over which we retained jurisdiction. There is no need for the Commission to alter or invalidate the 1988 order or to find some change in the status of competition. We can require that a detariffed service be offered if that is in the public interest or state or federal law requires it. We conclude that federal law does so require.

The federal Telecommunications Act of 1996 creates a duty for telecommunications carriers to resell their services. Section 251 (c) (4) (A) of the Act specifically requires that carriers offer for resale any telecommunications service they provide at retail to non-carrier customers. We do not see how USWC can evade this requirement while it continues to offer the service to any retail customers, "grandfathered" or not.

USWC is offering Centrex Plus Service to several of its non-carrier customers. The Company argued that because it offers a volume discount, the service should not be offered on a wholesale basis.⁴ Under the federal law, however, there is no exception for volume discounted services. USWC offers Centrex Service on a

³Docket No. 86-049-17, January 25, 1988 order, pgs. 4-5.

⁴USWC Exhibit 1, p. 9.

DOCKET NO. 96-049-T05

-6-

retail basis and that fact is insurmountable under the law.

The Commission acknowledges USWC's and the Division's argument that resellers may be able to arbitrage Centrex in their provision of business telecommunications service. That, in and of itself, however, does not appear to be reason enough under the federal law for the Commission to approve withdrawal or grandfathering of a service when it is being offered as a retail service. Obsolescence of a service would justify withdrawal, but that action, at least of regulated and detariffed services, would require Commission approval.

Division witness Fuller offered exhibits DPU 3 and 4 to illustrate the cost of providing Centrex Plus Service and how it has been performing for USWC. That was the only evidence offered in this proceeding to establish the cost of the service. Those exhibits indicate that Centrex has been recovering its costs, but it has not been producing the average system rate of return. Mr. Fuller testified that those results are affected by allocations and assumptions of DCOS. That is true of all cost studies. Mr. Fuller also testified that, based on DCOS results, Centrex may not produce much, if any, profit for either USWC or resellers.⁵ Under the federal law, however, that still does not justify grandfathering the service and then not making it available for resale. The fact remains that as long as USWC offers the service on a retail basis

⁵Transcript, p. 159.

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DOCKET NO. 96-049-T05

- 8 -

Any person aggrieved by this Order may petition the Commission for review within 20 days of the date of this Order. Failure to do so will forfeit the right to appeal to the Utah Supreme Court.

DATED at Salt Lake City, Utah, this 25th day of September, 1996.

/s/ Stephen F. Mecham, Chairman

(SEAL)

/s/ Constance B. White, Commissioner

/s/ Clark D. Jones, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary



JIM GERINGER
GOVERNOR

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September 6, 1996

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Re: IN THE MATTER OF THE APPLICATION OF U S WEST COMMUNICATIONS, INC., FOR AUTHORITY TO MOVE ITS CENTREX PLUS SERVICE TO THE OBSOLETE SECTION OF THE EXCHANGE AND NETWORK SERVICE PRICE SCHEDULE AND DISCONTINUING THE OFFERING TO NEW CUSTOMERS - Docket No. 70000-TT-96-279

Dear Parties of Record:

Enclosed is a copy of the Commission's Memorandum Opinion, Findings and Order in the above-referenced docket.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "David J. Lucero".

DAVID J. LUCERO, Assistant Secretary

DJL/ilb

Enclosure

xc: Mike Ceballos
U S WEST

BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

IN THE MATTER OF THE TARIFF FILING OF)
U S WEST COMMUNICATIONS, INC., FOR)
AUTHORITY TO MOVE ITS CENTREX PLUS)
SERVICE TO THE OBSOLETE SECTION OF) DOCKET NO. 70000-TT-96-279
THE EXCHANGE AND NETWORK SERVICE)
PRICE SCHEDULE AND DISCONTINUING THE)
OFFERING TO NEW CUSTOMERS)

APPEARANCES

PAUL J. HICKEY and ROGER FRANSEN
of Hickey, Mackey, Evans, Walker & Stewart, Cheyenne, Wyoming,
and **KATHRYN E. SHEFFIELD**, Attorney at Law, Denver, Colorado,
for Applicant U S WEST Communications, Inc.
(hereinafter referred to as U S WEST)

REBECCA DeCOOK, Attorney at Law, Denver, Colorado,
for Intervenor/Complainant AT&T Communications of the Mountain States, Inc.
(hereinafter referred to as AT&T)

ALEXANDER K. DAVISON, of Patton & Davison,
Cheyenne, Wyoming for Intervenor/Complainant
MCI Telecommunications, Corp.
(hereinafter referred to as MCI)

HEARD BEFORE

CHAIRMAN STEVE ELLENBECKER
DEPUTY CHAIRMAN DOUG DOUGHTY
COMMISSIONER KRISTIN H. LEE

Chairman Steve Ellenbecker presiding.

MEMORANDUM OPINION, FINDINGS AND ORDER
(Issued September 6, 1996)

This matter is before the Commission upon:

1. The price schedule filing of U S WEST to move its Centrex Plus service to the obsolete section of its Exchange and Network Services Price Schedule, discontinuing the offering of the service to new customers while continuing to make the service available to current customers (commonly referred to as "grandfathering" or "grand-parenting);

2. The objections/complaints and requests for public hearing filed by the Telemanagement Coalition (Telemanagement), McLeod Telemanagement, Inc. (McLeod) and the objections/complaints filed by AT&T and MCI as they relate to this Centrex Plus price schedule filing; and,

3. The investigation initiated by the Commission in this matter as set forth in its Notice and Order Setting Public Hearing pursuant to W.S. §§ 37-15-401(a)(i), 37-15-401(a)(v) and the Wyoming Administrative Procedure Act.

The Commission, having considered the price schedule filing, the evidence of record presented at the public hearing held in this matter, its files regarding U S WEST, applicable Wyoming utility law including the Wyoming Telecommunications Act of 1995 (the Wyoming Act), and the federal Telecommunications Act of 1996 (the Federal Act), and otherwise being fully advised in the premises, FINDS and CONCLUDES:

FINDINGS ON PARTIES AND PROCEDURES

1. U S WEST is a "telecommunications company " as defined in W.S. § 37-15-103(a)(xi) engaged in the provision of local exchange and intraLATA

telecommunications services within the state of Wyoming in certain certificated areas as authorized by the Commission. U S WEST is subject to the general jurisdiction of this Commission pursuant to W.S. § 37-15-401.

2. AT&T is a telecommunications company as defined in W.S. § 37-15-103(a)(xi), engaged in the provision of intrastate interLATA interexchange telecommunications services throughout the state of Wyoming pursuant to previous certificate authority granted by this Commission. AT&T is an "interexchange telecommunications company" as defined in W.S. § 37-15-103(a)(v) and is regulated as an interexchange company under W.S. § 37-15-301. AT&T has also been granted certificate authority to provide local exchange service in U S WEST's Wyoming exchanges, excepting the Afton, Wyoming exchange, pursuant to a final order issued on August 16, 1996, in Docket No. 70017-TA-96-1.

3. MCI is an "interexchange telecommunications company" as defined in W.S. § 37-15-103(a)(v), and as such, is regulated as an interexchange company under W.S. § 37-15-301. MCI is engaged in the provision of interexchange telecommunications services throughout the state of Wyoming.

4. The Telemanagement Coalition is an unincorporated association of telemanagement companies that purchase and resell or rebill the Centrex services of U S WEST in various states. No members of the coalition were providing telemanagement services within the state of Wyoming at the time of the filing of its objection in this matter.

5. McLeod is a competitive local exchange provider within the states of Iowa and Illinois through its resale of U S WEST's Centrex Plus service. McLeod does not provide telecommunications services within the state of Wyoming.

6. U S WEST filed its Centrex Plus service price schedule filing on February 5, 1996, proposing to move the service to the obsolete section of its price schedules. By doing so, U S WEST proposed to discontinue the offering of this service to new customers as of February 6, 1996, but continue to provide the service to current customers until April 29, 2005, pursuant to the revised terms and conditions contained in the filing.

7. By letter dated February 22, 1996, the Commission advised U S WEST that the price schedule sheets accompanying the filing would be placed in the Commission's files effective February 6, 1996.

8. By letter filed on March 4, 1996, MCI, through legal counsel, advised the Commission of its concerns regarding the withdrawal of the Centrex Plus service to new customers and the grandfathering of the service to existing U S WEST customers.

9. Telemanagement, through legal counsel, filed its letter on February 22, 1996, objecting to the Centrex Plus filing as it anti-competitively restricted the resale opportunities of Centrex Plus service. Further, Telemanagement alleged that the filing would eliminate one of the few local exchange business services that could favorably be resold. Telemanagement stated that the grandfathering of the service constituted undue discrimination and was in violation of federal and state law. Telemanagement petitioned the Commission to either reject the filing or set the matter for hearing.

10. McLeod filed its objection to the Centrex Plus filing on March 4, 1996, claiming that the withdrawing and grandfathering of the service would curtail its ability to compete in the future within the Wyoming local exchange market in contravention of the Wyoming Act and the Federal Act. McLeod further asserted that the filing was blatantly anti-competitive. McLeod petitioned the Commission to either reject the filing or set the matter for hearing.

11. AT&T filed its letter on March 6, 1996, objecting to the Centrex Plus filing alleging that U S WEST's action was anti-competitive and was intended to thwart the intent of the Federal Act.

12. By letters dated February 26, 1996, March 5, 1996, and March 8, 1996, the Commission directed U S WEST to respond to the objections/complaints of Telemanagement, MCI, McLeod and AT&T.

13. U S WEST filed its written response on March 18, 1996, to the complaints/objections of Telemanagement and McLeod. U S WEST generally denied the allegations of illegal or anti-competitive behavior; stated that no violation of the Federal Act had occurred as the service had been withdrawn prior to the effective date of the Act; averred that Centrex is a competitive service under the Wyoming Act, the withdrawal of which was nonjurisdictional to the Commission; that no unjust discrimination existed through the grandfathering provision; that neither of the complainants had ever subscribed to the service in Wyoming; and, petitioned that the complaints be dismissed for failure to state a cause of action. U S WEST filed on March 26, 1996, similar denials in response to the AT&T objection.

14. The Commission issued its Notice and Order Setting Public Hearing in this matter on March 29, 1996. The Notice and Order Setting Hearing was published in newspapers of general circulation in Casper and Cheyenne, Wyoming, and Public Service Announcements were broadcast over radio stations in Casper and Cheyenne.

15. Pursuant to public notice, the public hearing was held in Cheyenne, Wyoming in the Commission's hearing room on May 6, 1996. U S WEST, AT&T and MCI appeared and fully participated in the proceeding through the presentation of expert witnesses. These parties also presented legal argument regarding the jurisdictional issues relating to this filing. Telemanagement and McLeod did not appear or participate in the public hearing. U S WEST also filed on May 6, 1996, its hearing brief. The Commission at the conclusion of the hearing took the matter under advisement for the purpose of deliberation. MCI and AT&T filed post-hearing responses to requests for information solicited by the Commission at the hearing.

16. By Notice and Order Setting Additional Public Hearing issued June 25, 1996, the Commission reopened the record in this matter and set an additional public hearing to commence on July 29, 1996, for the purpose of taking additional legal argument and evidence on the issue of the competitive versus the noncompetitive and/or essential nature of Centrex Plus service. Such a determination was considered essential by the Commission in determining its ability to invoke jurisdiction over this price schedule filing pursuant to W.S. § 37-15-404(c). The Commission further directed U S WEST to bear the initial burden of supporting its position that Centrex Plus was a service subject to competition, and was also directed to provide evidence regarding the various features,

functions and elements of Centrex Plus service, as well as provide additional evidence regarding the new service product that U S WEST indicated was intended to replace Centrex Plus service.

17. U S WEST filed on July 24, 1996, its Motion to Set Aside the Notice and Order Setting Additional Public Hearing arguing, inter alia, that the Commission did not have statutory or agency rule authority to reopen the record in this contested case; that the burden of proof resided with the complainants in this matter; that the Commission had improperly shifted the burden of proof to U S WEST; that U S WEST had no duty to produce evidence; and, generally asserted its position that Centrex Plus was a competitive service by statutory definition pursuant to W.S. § 37-15-202(c) and therefore not subject to Commission approval prior to its withdrawal of the service.

18. MCI filed on July 28, 1996, its response to the U S WEST motion to set aside the additional public hearing, stating inter alia, that the Commission had adequate authority to reopen the record in this case pursuant to its general investigative powers contained in W.S. § 37-2-117 and the rehearing provisions of W.S. § 37-2-214.

19. U S WEST, AT&T and MCI were given an opportunity at the July 29, 1996, public hearing to present their legal arguments in support of, or in opposition to, the U S WEST motion to set aside the additional public hearing. Telemanagement and McLeod did not appear at this public hearing. At the conclusion of the parties' respective arguments, the Commission denied U S WEST's motion and directed U S WEST to proceed with the presentation of its evidence as directed by the Commission in its Notice and Order. U S WEST advised the Commission that it was not prepared to provide any

additional evidence in this matter. Upon inquiry by the Commission, MCI and AT&T advised the Commission that they had no further evidence to present given U S WEST's lack of additional evidence. The Commission closed the record in this matter and took this case under advisement pending deliberation.

20. On August 1, 1996, and pursuant to notice, the Commission deliberated this matter and determined that Centrex Plus was a noncompetitive service and therefore the price schedule filing was jurisdictional to the Commission. The Commission denied the movement of Centrex Plus service to the obsolete section of its price schedules and the grandfathering of the service to existing customers. Commissioner Lee did not join in the motion and determination of the Commission denying the price schedule filing.

FINDINGS OF FACT

Summary of U S WEST's Evidence:

21. U S WEST avers that Centrex Plus service is a competitive service as defined in W.S. § 37-15-202(c) and therefore the decision to continue or discontinue the offering of the service rests solely with U S WEST and not the Commission.

22. U S WEST describes Centrex Plus service as a "... family of central office-based switching services offered by U S WEST." (May 6th hearing Tr., p. 32. *Note: Unless otherwise indicated, all transcript references are to the May 6th hearing.*) In addition to providing switching services, Centrex Plus consists of a number of custom calling features such as call hold, call transfer and three-way calling. Centrex service has

also been referred to in Wyoming as Centron, Customized Call Management Services and Centrex Plus. Centrex Plus is a central office based switching alternative to Private Branch Exchange (PBX) switches which are located at the premises of the customer. U S WEST states that PBXs and Centrex Plus services are designed and marketed to serve medium and large business and government end user customers.

23. U S WEST further states that Centrex type services have been marketed in the state of Wyoming since 1968 and have been treated as competitive services. The initial service offering was subsequently grandfathered in 1983 and replaced with Centron 300 which was offered as a competitive service. Other predecessors of Centrex Plus such as Centron 6, Centron 30 and Centron Customer service had previously been offered and subsequently grandfathered as new Centrex type services were introduced.

24. U S WEST avers that its current number of Centrex customers in Wyoming totals less than seventy-five and that no one, including the protesting parties in this proceeding, has ever resold the service in this State (Tr., p. 34).

25. U S WEST supports its discontinuance and grandfathering of Centrex Plus service by stating that the service is a voice-only, central office based switching service which does not meet customer demands for switched data and video. As part of its marketing strategies, U S WEST proposes to introduce a new service product later this summer which meets these additional customer demands. It chose not to continue to offer and continue the growth of its current Centrex Plus product (Tr., p. 36). U S WEST further states that the service was withdrawn because of price arbitrage concerns that could occur as a result of the continued offering of the service, although U S WEST

acknowledged that the price arbitrage issue is not a present concern in Wyoming because the service is not currently being resold (Tr., pp. 36, 38).

U S WEST stated that it proposed to grandparent Centrex Plus service for its existing customers until April 29, 2005, as this date corresponds to the expiration date of its longest current customer contract for the service system-wide (Tr., p. 40).

26. Finally, it is U S WEST's position that other competitive alternatives to Centrex Plus are available to retail customers, such as PBX's, which can provide functionally equivalent features; that the Wyoming Act defines Centrex Plus as a competitive service; that the Commission has previously determined that the service is a competitive service; and, that the objections should be dismissed on these bases.

Summary of MCI's evidence:

27. MCI states that the proposed Centrex Plus filing is contrary to the Federal Act, and is " . . . anti-competitive, anti-consumer and harmful to the public interest in Wyoming." (Tr., p. 117.) MCI asserts that Centrex Plus service is a noncompetitive service which, by its new terms and conditions, precludes subscription to the service by new customers, especially wholesale customers, thus curtailing and unnecessarily delaying the development of local exchange competition in Wyoming. MCI avers that the resale of Centrex is essential to the promotion of local exchange service competition (Tr., p. 119).

28. MCI further expressed its belief that the filing to discontinue Centrex Plus three days prior to the signing of the Federal Act was not coincidental and reflects U S WEST's desire to discourage competition, as all interested parties had advance notice

of the resale requirements contained in the Federal Act at Sections 251(b)(1) and 251(c)(4). MCI asserts that U S WEST's actions clearly violate these sections of the Federal Act (Tr., p. 124).

29. In supporting its position that Centrex Plus is a noncompetitive service and is the only mechanism currently available to competitors wishing to enter the local exchange market, MCI's witness testified that:

Moreover, Centrex (or its functional equivalent) is an essential service for new entrants to use for entering and competing in the local exchange market in Wyoming. Until local exchange unbundling and interconnection arrangements were (sic) developed in Wyoming, U S WEST's potential competitors have no realistic alternatives that duplicate the features and functionality provided by Centrex. (Tr., p. 125.)

MCI further argued that this Commission's approval of the filing would conflict with Section 253(a) of the Federal Act which provides, " No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." (Tr., pp. 125-126.)

30. MCI further submits that Centrex Plus is a noncompetitive service as it contains the Centrex Local Transport Facility function which is a monopoly service which can only be provided by U S WEST (Tr., p. 129). In addition, Centrex Plus service is a part of the local loop and includes certain switch functions that are only available from U S WEST. MCI summarizes by stating that no other provider has technically or economically comparable alternative services to Centrex Plus service and that no

competitive alternative to Centrex Plus service is available to competing telecommunications providers such as MCI.

31. MCI further avers that the withdrawal and grandparenting of Centrex Plus service violates W.S. § 37-3-112 which prohibits "unjust discrimination" or "undue preference" in respect to the provision of services and the provision in W.S. § 37-15-404(a) of the Wyoming Act which prohibits unreasonable discrimination as to prices, terms or conditions of service.

32. Finally, MCI argues that the proposed filing violates Sections 251(b)(1) and 251(c)(4) of the Federal Act which impose a duty on local exchange companies to make their respective services available for resale without attaching "unreasonable or discriminatory conditions or limitations."

Summary of AT&T's evidence:

33. AT&T generally concurs with the position of MCI that the proposed withdrawal of Centrex Plus service is anti-competitive in nature and is intended to frustrate the development of competition in Wyoming, and that it is inconsistent with the expressed competitive intent of the Wyoming and Federal Acts.

34. In describing the functions of Centrex service, AT&T's expert witness stated:

Centrex service is nothing more than a local loop and certain functionalities of the local switch offered on a discounted basis, or stated another way, 1FB service offered at a volume discount.

Thus, as a practical matter, U S WEST is the monopoly provider of these basic network functions and features. While

some of the features and functions available in Centrex service are available through the use of some customer premises equipment, the loop is not.

Consequently U S WEST is a sole supplier of Centrex service in total. For this reason, the service cannot conceivably be considered competitive. (Tr., pp. 176-177.)

Further, "The new entrant may choose to use the dedicated switch capabilities of Centrex to serve a single customer or to use the same dedicated switch capabilities and loops to serve multiple local exchange customers." (Tr., p. 184.)

35. In addition to the local loop function of Centrex service, AT&T further states that Centrex also "... offers the transition (sic) service and the facilities necessary for the connection between the end user's or customer's premises or location and the local network switching facilities." (Tr., p. 177.)

36. In arguing its position that Centrex is a noncompetitive service and falls within the definition of an "essential telecommunications service" under the Wyoming Act, AT&T further asserts that regardless of the competitive/noncompetitive/essential categorization of Centrex service, the continued availability of Centrex service at retail, even on a grandparented or deregulated basis, subjects that service to the resale obligations under Section 251(b)(1) and Section 251(c)(4) of the Federal Act (Tr., pp. 179-180).

37. AT&T alleges that U S WEST's proposed treatment of Centrex service is anti-competitive in that it raises barriers to entry by competitors in the toll market; it reduces the choices of customers in the marketplace for service packages and telecommunications providers; the grandfathering of the service at this time without a

new succeeding service until some later time will not provide viable functional service alternatives to large business customers in the interim; and, the proposed new service is not intended to meet the needs of small and medium business customers who will no longer have Centrex service or a functionally equivalent service (Tr., pp. 187-188).

38. Finally, AT&T avers that the proposed withdrawal and grandfathering of the service is contrary to the federal policy as expressed in the Federal Act which makes it incumbent on local exchange companies to make their services available for resale without attaching unreasonable or discriminatory conditions or limitations on the resale of services.

Commission's Findings:

39. U S WEST in its Centrex Plus service price schedule filing, in addition to proposing the discontinuance of the service to new customers effective February 6, 1996, and grandparenting the service to current customers until April 29, 2005, instituted further changes to the terms and conditions of service including, inter alia, the extension of existing contracts for a maximum term not exceeding 60-84 month, with the ability for multiple extensions of the contract for terms which could expire up and until April 29, 2005, and provisions which allow existing customers to move, add and change station lines and optional features including subscribing to additional blocks of station lines.

40. Although U S WEST asserts that the Commission has historically treated Centrex-like services and Centrex Plus service as competitive services, this Commission has not previously made a determination or formal ruling that Centrex Plus service is either a competitive, noncompetitive or essential service, either prior to or

subsequent to the enactment of the Wyoming Act. This fact was acknowledged by U S WEST's witness (Tr., pp. 58). Further, U S WEST has not to date petitioned this Commission for a ruling, pursuant to W.S. § 37-15-202(a) that Centrex Plus service is a competitive service. This proceeding constitutes the first opportunity to consider the nature of Centrex Plus service to determine whether this service is indeed a competitive service in the current market place or under statutory definition.

41. The Commission in setting this Centrex Plus service price schedule filing for public hearing made an initial determination, that an investigation and hearing in this matter were appropriate under the provisions of W.S. § § 37-15-401(a)(i) and 37-15-401(a)(v), based upon the allegations of intervening parties that the actions of U S WEST were anti-competitive, unreasonably discriminatory and contrary to the pro-competitive language, spirit, and intent of the Wyoming and Federal Acts.

42. Central to the determination of whether this Commission has statutory authority under the Wyoming Act to approve or disapprove the withdrawal and grandfathering of Centrex Plus service, is the need to address the basic issue as to whether Centrex Plus service is a competitive or noncompetitive service. The controlling Wyoming statutory provision applicable to this Commission's jurisdiction regarding the withdrawal of a telecommunications service is W.S. § 37-15-404(c) which states, "A telecommunications company providing a noncompetitive telecommunications service shall not discontinue providing the service without the commission's approval." (Emphasis added.)

43. At the May 6, 1996 hearing, and in the briefs and arguments of legal counsel, U S WEST asserted its basic position that Centrex Plus was a competitive service by definition pursuant to W.S. § 37-15-202(c). In contrast, MCI and AT&T presented evidence in support of their respective positions that Centrex Plus was a noncompetitive and/or essential service, as there were no functionally equivalent alternate or competitive services to Centrex Plus service available in the marketplace, and that Centrex Plus fell under the statutory definition of an "essential telecommunications service" under W.S. § 37-15-103(a) (iv).

44. The Commission pursuant to its investigative powers directed U S WEST in its Notice and Order Setting Additional Hearing to provide additional evidence which would identify the features, functions and elements of Centrex Plus service. As reflected in the record of the July 29, 1996 public hearing, U S WEST disregarded the direction of the Commission to present additional evidence on this and other matters. Therefore, the Commission must render its decision based upon the evidence of record adduced at the May 6th, 1996 hearing.

45. The Commission finds that MCI and AT&T have provided the substantial evidence in this matter and support this Commission's determination that Centrex Plus service in its functions, features and elements is essentially local business exchange service. This finding is based on the evidence presented as summarized in paragraphs 30, 34 and 35, hereinabove, that Centrex Plus is comprised of the local loop, the Centrex Local Transport Facility function, certain switching functions, and is essentially single line business service (1FB) offered at volume discount rates (Tr., p. 176). In

addition, the Commission finds persuasive the argument of AT&T that Centrex Plus service is an "essential service" as defined in the Wyoming Act (See W.S. § 37-15-103(a)(iv)(C)) as it provides transmission service and facilities necessary for the connection between the end user's location or premises and the local network switching facility (Tr., p. 177). The functions and elements of Centrex Plus service can only be provided at this time through the switching and loop facilities of U S WEST. Clearly, Centrex Plus is a noncompetitive monopoly service that can only be provided by U S WEST at this time.

46. The Commission rejects the argument of US WEST that customer-premised Private Branch Exchange (PBX) service is the functional equivalent of Centrex Plus, a central office based service. Other than its argument that PBX service was a competitive alternative to Centrex service at retail, U S WEST provided no additional factual evidence to support its position that Centrex Plus was a competitive service. The evidence of record supports this Commission's finding that no other provider can provide a service which is technically or economically equivalent to Centrex Plus service. In addition, the uncontroverted evidence demonstrated that no other alternative service is currently available that can provide the functional equivalency of Centrex Plus at the wholesale for resale level. This was acknowledged by U S WEST's own witness (Tr., p. 66).

47. In addition to the factual evidence which supports this Commission's finding that Centrex Plus is a noncompetitive service, it is also critical to note the impact the continued provision of Centrex Plus service to existing and new customers, including

competing providers, will have in carrying out the intent of the Wyoming Act and the Federal Act in promoting competition in the local exchange market.

MCI and AT&T in supporting their claims of anti-competitive behavior, as a result of U S WEST's withdrawal of Centrex Plus service, emphasized the essential nature and the need to continue offering Centrex Plus service on an as-is basis (in the absence of unbundling of the local exchange and interconnection arrangements) as it provides the sole mechanism for new competitors to enter and compete in the local market (Tr., pp. 119, 120, 125, 153, 162, 178, 184-186). U S WEST's witness acknowledged the valuable role of Centrex Plus service in providing access to the local exchange market as reflected in the following exchange:

A. What we have found with the resale of Centrex Plus, is that a resale -- or is that a reseller would purchase Centrex Plus and then make that service available to wide array of customers at numerous locations. They would aggregate that service, as well as the potential for long distance, and then take that long distance traffic -- especially use a private line facility and take that long distance to an interexchange carrier, and we would lose the access charges that the normal customers would pay by utilizing the normal business line service, and would potentially lose the toll, the long distance, U S WEST long distance, to the extent that provider would have that traffic taken to a different provider of long distance.

Q. So, in essence, they would use it as a substitute for local exchange?

A. They would use it as a substitute for local exchange, and our long distance, and our access. (Tr., p. 55.)

48. As reflected in the record, U S WEST also withdrew and grandparented its Centrex Plus service in its other state jurisdictions at the time it submitted the subject filing in the state of Wyoming.

It is important to note that in one of the first state jurisdictions where this filing was challenged, the Iowa Department of Commerce Utilities Board in rejecting the filing noted that the proposed changes in the terms and conditions of Centrex Plus service had,

The effects of these changes restrict growth potential for reselling customers and eliminate the opportunity for a new competitive local exchange carrier to enter the local exchange market unless it constructs its own facilities-based network. The changes render the service useless for purposes of resale. (See Iowa Department Decision and Order Issued June 14, 1996, in Docket Nos. FCU-96-1, FCU-96-3, page 6, attached to MCI Response to U S WEST's Motion to Set Aside Public Hearing.)

The Iowa Board in its Findings determined that, "6. The development of competition in the local exchange market will be furthered by requiring U S WEST to provide Centrex Plus service without restrictions until it has developed a replacement service which has been approved by the Board." (Id., at pp.9-10.) The Board further concluded that by precluding the offering of the service to new customers, U S WEST had discriminated against another provider and had discriminated in its own favor by entering into favorable agreements with some providers at the exclusion of other providers. (Id., pp. 3, 5, and 10.)

49. The substantial evidence of record also supports this Commission's additional finding that the proposed withdrawal and grandfathering of Centrex Plus

service results in unreasonably discriminatory treatment to the advantage of U S WEST's current Centrex Plus subscribers to the exclusion of all prospective customers for the service. The evidence of record shows that U S WEST will allow its current customers to continue to extend and enter into multiple extensions of their existing contracts for Centrex Plus service for terms up to and until April 29, 2005, and continue to add additional station lines during this period. Further, only current U S WEST Centrex Plus subscribers will derive the sole benefit from the advantageous pricing structure of Centrex Plus service.

The significant period for extension of existing contracts to the year 2005, given that some of the existing contracts expire this year with the longest current contract term in Wyoming extending until September of 2002, (Tr., pp. 58-59) clearly provides existing customers with benefits of a service that are no longer available to the vast majority of customers. This practice of allowing customers to continue to extend their service agreements for extended periods of time is contrary to the general practice associated with the grandfathering of services where customers are allowed to continue to receive the service until such time as contractual obligations are fulfilled or an alternative better service is provided. The Commission is not persuaded by U S WEST's justification that the extended availability of the service on a grandfathered basis until the year 2005 is necessary to allow customers an adequate time to assess their respective service needs (Tr., p. 64).

Further, new potential customers desiring Centrex Plus type services will be deprived of the opportunity to subscribe to a functionally and similarly priced service for

a period of time until the new proposed service offering is made available (Tr., pp. 49, 60). This appears contrary to the past practices of U S WEST of having replacement Centrex type service offerings available at the time of grandfathering other Centrex type services (Tr., p. 72).

CONCLUSIONS OF LAW

1. Proper notice of the public hearing in this matter was given under the Wyoming Administrative Procedure Act, and the relevant provisions of the Commission's Rules. The Notice and Order cited W.S. §§ 37-15-401(a)(i), 37-15-401(a)(v) and the Wyoming Administrative Procedure Act as the basis for setting this matter for public hearing. The provisions cited in W.S. § 37-15-401 entitled "Commission Power," provide the Commission with the authority to investigate the methods and practices of telecommunications companies and also provide the Commission with the authority to hold hearings on complaints or for "good cause." The Commission in setting this matter for hearing specifically expanded the scope of the hearing to include "investigation" of the price schedule filing (See Notice and Order at paragraph 2), and requested the parties to address the allegations that U S WEST's actions were unreasonably discriminatory in nature. This price schedule filing was not noticed for hearing as merely a complaint proceeding as erroneously characterized by U S WEST. This is an important distinction that was made by the Commission to allow it to inquire and require U S WEST to provide certain evidence in support of its filing, which U S WEST nonetheless disregarded.

2. The Commission reopened the record in this matter and set this matter for additional hearing, on its own motion, pursuant to the statutory authorities referenced in paragraph 1 above, and Commission Rule Section 115(b)(ix) which provides, in part, "The hearing may be reopened at a later date, for good cause shown, by order of the Commission upon motion by a party or on the Commission's own motion."

3. In determining what constitutes a "competitive service" as defined in the Wyoming Act, the Commission must be guided by the language contained in W.S. § 37-15-202(c) which states, "Local exchange services provided by resale, telecommunications services provided by interexchange telecommunications companies, and telecommunications services other than local exchange service, switched access and interexchange telecommunications services provided by a local exchange company shall be considered subject to competition for purpose of regulation under this title." (Emphasis added.) "Local exchange service" which by statutory definition is specifically excluded as a "competitive service" under W.S. § 37-15-202(c), is further defined in W. S. § 37-15-103(a)(viii) as, "... essential telecommunications services provided within a local exchange area." The Commission concludes based upon the substantial evidence of record as set forth in its findings above, that Centrex Plus service is local exchange service as it falls within the definition of "essential telecommunications service" as set forth in W.S. § 37-15-103(a)(iv) as it provides customers with access, "... to service that is necessary for the origination or termination, or both, of two-way switched telecommunications for both residential and business service within a local exchange area" and, constitutes "single line flat or

measured business service" (See W.S. § 37-15-103(a)(iv)(B)) and "Transmission service and facilities necessary for the connection between the end user's or customer's premises or location and the local network switching facility including the necessary signaling service used by customers to access essential telecommunications." (See W.S. § 37-15-102(a)(iv)(C).) As a local exchange service provided by a local exchange company, Centrex Plus falls outside the definition of a "competitive service" as set forth in W.S. § 37-15-202(c).

4. In addition to meeting the statutory definition of a "noncompetitive service," the overwhelming and substantial evidence, as set forth in the Commission's findings above, supports this Commission's further conclusion that Centrex Plus service is a noncompetitive service within the present marketplace that can only be provided at this time by U S WEST.

5. As a noncompetitive and essential service, the withdrawal of Centrex Plus service is subject to the jurisdiction of this Commission pursuant to W.S. § 37-15-404(c) which requires prior Commission approval before the discontinuance of a noncompetitive telecommunications service. Based upon the Commission's findings that the withdrawal and grandfathering of Centrex Plus service will seriously impair the ability of other providers to competitively access and compete in the local exchange market, the Commission concludes that approval of the Centrex Plus filing is not in the public interest and will hinder and delay the opening of the local exchange market to competition within the state of Wyoming.

6. The Commission further concludes that the proposed withdrawal and grandparenting of Centrex Plus service "unreasonably discriminates" in favor of U S WEST's current Centrex Plus subscribers, to the exclusion of other prospective customers as well as other potential telecommunications companies, in direct violation of W.S. § 37-15-404(a). Rejection of the Centrex Plus filing on the sole basis of the unreasonably discriminatory nature of the filing is supported.

7. The Commission further concludes that the proposed Centrex Plus filing violates certain provisions of the Federal Act, to-wit: Sections 251(b)(1) and 251(c)(4) which place a duty and obligation on local exchange companies and incumbent local exchange companies to make their telecommunications services available for resale without imposing "unreasonable or discriminatory conditions or limitations." This Commission concurs with the positions of MCI and AT&T that the proposed Centrex Plus service filing imposes unreasonable and discriminatory conditions and limitations on this service in an attempt to preclude the availability of the service for resale. The Commission further concurs with the position of AT&T that the withdrawal and grandfathering of Centrex Plus service does not remove this service from the resale obligations pursuant to the cited sections of the Federal Act.

IT IS THEREFORE ORDERED THAT:

1. U S WEST Communications, Inc.'s price schedule filing requesting authority to move its Centrex Plus service to the obsolete section of its Exchange and Network Services Price Schedule, and discontinuing the offering of the service to new

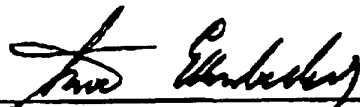

customers while grandparenting the service for current Centrex Plus subscribers, is hereby denied.

2. U S WEST is directed to resubmit its prior price schedule sheets applicable to its offering of Centrex Plus service which were in effect immediately prior to its filing of its proposed Centrex Plus service schedules, and continue to provide this service pursuant to the applicable terms and conditions.

3. This Order is effective immediately.

MADE and ENTERED this 6th day of September, 1996.

PUBLIC SERVICE COMMISSION OF WYOMING


 STEVE ELLENBECKER, Chairman

 DOUG DOUGHTY, Deputy Chairman




 DAVID J. LUCERO, Assistant Secretary

Post-It Fax Note 1/8/1		Pages 0	
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CE COMMISSION OF WYOMING

IN THE MATTER OF THE TARIFF FILING OF)
 U S WEST COMMUNICATIONS, INC., FOR)
 AUTHORITY TO MOVE ITS CENTREX PLUS)
 SERVICE TO THE OBSOLETE SECTION OF THE) DOCKET NO. 70000-TT-96-279
 EXCHANGE AND NETWORK SERVICE PRICE)
 SCHEDULE AND DISCONTINUING THE)
 OFFERING TO NEW CUSTOMERS)

ORDER ON PETITION FOR REHEARING
(Issued March 21, 1997)

This matter is before the Commission upon the Petition for Rehearing by U S WEST Communications, Inc., (hereinafter U S WEST or the Company) of the Commission's Memorandum Opinion, Findings and Order issued on September 6, 1996.

The Commission, having reviewed the Petition, its files regarding U S WEST, applicable Wyoming utility law, and otherwise being fully advised in the premises, FINDS and CONCLUDES:

1. U S WEST is a telecommunications company as defined by W.S. § 37-15-103(a)(xi) and, as such, is subject to the Commission's jurisdiction pursuant to the provisions of W.S. § 37-15-401.

2. In its Memorandum Opinion, Findings and Order issued on September 6, 1996, (hereinafter the Order), the Commission denied U S WEST's price schedule filing requesting authority to move its Centrex Plus service to the obsolete section of the Company's Exchange and Network Price Schedule and from discontinuing the offering of the service to new customers while grandparenting the service for current Centrex Plus subscribers. The basis of the Commission's decision was its conclusion that Centrex Plus

service fell within the definition of an "essential telecommunications service" as set forth in W.S. § 37-15-103(a)(iv) as it provided customers with access, "... to service that is necessary for the origination or termination, or both, of two-way switched telecommunications for both residential and business service within a local exchange area" and, constituted a "transmission service and facilities necessary for the connection between the end user's or customer's premises or location and the local network switching facility including the necessary signaling service used by customers to access essential telecommunications." See W.S. § 37-15-103(a)(iv)(C). As a noncompetitive and essential telecommunications service, Centrex Plus is subject to the jurisdiction of the Commission pursuant to W.S. § 37-15-404(c). Based on the record developed during the hearings held in this matter, the Commission concluded that it would not be in the public interest to allow U S WEST's request to withdraw and grandfather Centrex Plus service as such an action would hinder and delay the opening of the local exchange market in Wyoming to competition.

3. On October 7, 1996, U S WEST filed a Petition for Rehearing (hereinafter Petition). Responses to U S WEST's Petition were filed by Interveners AT&T Communications of the Mountain States, Inc., and MCI Telecommunications Corporation.

4. Petitions for Rehearing are reviewed under the standard set forth in W.S. § 37-2-214:

At any time after an order has been made by the commission any person interested therein may apply for a rehearing in respect to any matter determined therein and the commission shall grant and hold such rehearing if in its judgment sufficient reason therefor be made to appear, which hearing

shall be subject to such rules as the commission may prescribe. Applications for rehearing shall, as to the matter specified therein, stay the effect of any order or decision of the commission for thirty (30) days thereafter, or until the commission grants or denies said application. An order or decision made after such rehearing vacating, amending or modifying the original order or decision shall not, as to the matter considered on rehearing, be open to a further application for rehearing, and shall have the same force and effect as the original order or decision.

The statute places the burden upon the party seeking rehearing to show sufficient reason for a rehearing.

5. After consideration of U S WEST's Petition and the arguments raised therein, the Commission denied the Petition in open meeting action taken on November 14, 1996, based on the conclusion that U S WEST had failed to show sufficient reason(s) for a rehearing. Taking each contention raised by U S WEST in turn, the denial was based on the following:

a. U S WEST's first argument is that the Commission had erred in its conclusion that Centrex Plus was an "essential telecommunications service" under W.S. § 37-15-103(a)(iv). That contention is nothing more than reiteration of the same argument U S WEST presented to the Commission in the Company's filings and at the hearing. The Commission fully dealt with this argument in its Order.

b. The Company argues that the Commission improperly mixed a complaint proceeding with an investigation with the result that when the "Commission was not satisfied with the case presented by the complainants, [the Commission] sought to fill

the gaps in the record by becoming an advocate for the complainants under the guise of an investigation." This contention is without merit. In addition to the fact that U S WEST does not cite any portion of the record where the Commission allegedly became an "advocate" for the complainants, the record clearly shows that the proceedings in this docket were held under the investigation provisions of the Wyoming statute and the Commission's rules. The Notice and Order issued on September 6, 1996, clearly states, in paragraph two, that **based on** complaints filed with the Commission, an investigation was necessary. This is further demonstrated by the fact that not all of the parties who filed complaints participated in the investigation by intervening in the hearing process.

c. U S WEST claims that the Commission's finding in paragraph 40 of its Order that, "this Commission has not previously made a determination or formal ruling that Centrex Plus service is either a competitive, noncompetitive or essential service, either prior to or subsequent to the enactment of the Wyoming Act" is without support in the record. The Company argues that the Commission's Order took a U S WEST witness' testimony out-of-context and that in at least two previous dockets the Commission had essentially ruled that Centrex Plus service (or its predecessor Centron) was a competitive service. Again, U S WEST's argument is without merit. The testimony of the U S WEST witness that the Company had never filed for an administrative determination is indeed supportive, albeit not conclusive, evidence that this Commission has not in fact ever made such a determination. In addition, the two previous dockets wherein the Commission characterized Centrex as "an optional communications system" and as "cross-elastic with PBX systems" do not and can not address the question of whether Centrex is an essential

telecommunications service under the technical definition of those terms as set out in the Wyoming Telecommunications Act of 1995.

d. U S WEST also argues that the Commission can not reconcile its conclusion that Centrex was not the functional equivalent of PBX service with "determinations in other proceedings which reviewed the cross-elasticity of Centrex and PBXs and the competitive nature of Centrex." Again, U S WEST ignores the fact that those prior proceedings were decided under a different statutory scheme and that they have little, if any, bearing upon whether Centrex Plus service is an essential telecommunications service under the specific, technical definitions given to those terms in the 1995 Telecommunications Act.

e. U S WEST argues that the record does not support the Commission's conclusion that there is no other service technically or economically equivalent to Centrex Plus service. U S WEST contends that PBX service is the functional equivalent of Centrex Plus. Contrary to U S WEST's contentions, the record is replete with evidence that in fact PBX service is not the equivalent of Centrex Plus service. The record demonstrates, for example, that Centrex Plus service provides central office based switching something PBX service does not, which means that a PBX customer unlike a Centrex customer would have to provide facilities and maintenance for that service. Additionally, Centrex Plus service includes local loop service which PBX service does not provide.

f. U S WEST takes issue with Conclusion of Law 6 in the Order which found that the "grandfathering" of Centrex service is "unreasonably discriminatory" arguing that such a conclusion has no basis in the record or in the Commission's findings of fact. U S WEST argues that grandfathering has historically been approved by the Commission

restriction on resale." U S WEST's claim fails to acknowledge the fact the FCC discussion is not relevant to the question of whether a particular service is an "essential telecommunications service" pursuant to W.S. § 37-15-103(a)(iv).

In summary, U S WEST's Petition failed to raise any issues which created a sufficient reason for the Commission to rehear this matter.

IT IS THEREFORE ORDERED THAT:

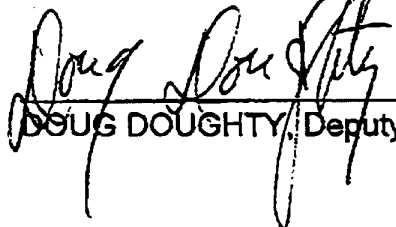
1. Pursuant to open meeting action taken on November 14, 1996, the Commission concludes that U S WEST's Petition for Rehearing should be, and the same hereby is, denied.
2. This Order is effective immediately.

MADE and ENTERED at Cheyenne, Wyoming, this 21st day of March, 1997.

PUBLIC SERVICE COMMISSION OF WYOMING




STEVE ELLENBECKER, Chairman


DOUG DOUGHTY, Deputy Chairman

ATTEST:


MICHAEL M. ROBINSON, Assistant Secretary

and that it is not discriminatory to not offer the service to customers who have never subscribed to it previously. In making its argument, U S WEST has failed to note why the Commission found the grandfathering proposal discriminatory. It was not the fact that U S WEST sought to grandfather the Centrex Plus service that is discriminatory per se, but rather it was **how** U S WEST proposed to do so. This was fully set forth in the Order at paragraph 49:

The evidence of record shows that U S WEST will allow its current customers to continue to extend and enter into multiple extensions of their existing contracts for Centrex Plus service for terms up to and until April 29, 2005, and to continue to add additional station lines during this period. Further, only current U S WEST Centrex Plus subscribers will derive the sole benefit from the advantageous Centrex Plus service.

The significant period for extension of existing contracts to the year 2005, given that some the existing contracts expire this year with the longest current contract term in Wyoming extending until September of 2002, clearly provides existing customers with benefits of a service that are no longer available to the vast majority of customers. This practice of allowing customers to continue to extend their service agreements for extended periods of time is contrary to the general practice associated with the grandfathering of services where customers are allowed to continue to receive the service until such time as contractual obligations are fulfilled or an alternative better service is provided. The Commission is not persuaded by U S WEST's justification that the extended availability of the service on

a grandfathered basis until the year 2005 is necessary to allow customers an adequate time to assess their respective service needs.

Further, new potential customers desiring Centrex Plus type service will be deprived of the opportunity to subscribe to a functionally and similarly priced service for a period of time until the new proposed service offering is made available. This appears contrary to the past practices of U S WEST of having replacement Centrex type service offerings available at the time of grandfathering other Centrex type services.

g. U S WEST also argues that the Commission's finding that Centrex Plus service is the "sole mechanism" for new competitors is contrary to fact and law. U S WEST contends that there are several ways for new competitors to enter the market including through the sale of single line residential and business service, through the resale of unbundled elements and through the purchase of unbundled elements used in combination with the competitor's own facilities. U S WEST ignores the Commission's qualifier in the same sentence where it made the statement that the need to have Centrex Plus service offered on an as-is basis as it provides the sole mechanism for new competitors to enter and compete in the local market was in the absence of unbundling of the local exchange and interconnection agreements. Additionally, in its Petition, U S WEST failed to confront the testimony from its own witness cited in the Order to support the Commission's statement.

h. Finally, U S WEST complains that the Commission did not consider the Federal Communications Commission's discussion of "the withdrawal of a service in the context of whether the withdrawal of a service from the retail market is an unreasonable